

**A RESOLUTION  
BY PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE**

**A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO ENTER INTO A SETTLEMENT AGREEMENT WITH 5R CONSTRUCTORS, LLC, RELATED TO CLAIMS RESULTING FROM CONTRACT NO. FC-7242-00; FIFTH RUNWAY SITE PREPARATION; PHASE I AND PHASE II AND THE LAWSUIT FILED BY 5R CONSTRUCTORS IN FULTON SUPERIOR COURT, CIVIL ACTION NO: 2005-CV-95955, AND THE COUNTERCLAIM FILED BY THE CITY OF ATLANTA IN THAT ACTION, PURSUANT TO WHICH THE CITY WILL PAY 5R CONSTRUCTORS FOUR HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$450,000.00) AND THE PARTIES WILL DISMISS THE LAWSUIT; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta ("City"), as owner and operator of the Hartsfield-Jackson Atlanta International Airport ("H-JAIA"), has undertaken a major expansion program to facilitate Passenger and Facility Improvements; and

**WHEREAS**, as part of that expansion program, the City undertook the design and construction of the new Runway 10/28 (the "Project") and executed Contract No. FC-7242-00; Fifth Runway Site Preparation; Phase I and Phase II (the "Contract") with 5R Constructors, LLC, pursuant to which 5R Constructors, in part, was to excavate, move and place the fill material required to construct the Project; and

**WHEREAS**, 5R Constructors, LLC, entered into several agreements with companies controlled by John D. Stephens, including John D. Stephens, Inc. and Stephens MDS (the "Stephens Companies"), pursuant to which the Stephens Companies were to supply fill material to 5R Constructors and transport the material to the Project site; and

**WHEREAS**, 5R Constructors, near the end of the Project, filed a lawsuit for a declaratory judgment in Fulton County Superior Court, Civil Action No: 2005-CV-95955, (the "Litigation") in which it named the City and the Stephens Companies as parties and requested that the Court rule on the parties' obligations under their various contracts; and

**WHEREAS**, the Stephens Companies filed a counterclaim against 5R Constructors in the Litigation for in excess of \$170 million, alleging, among other things, that 5R Constructors failed to leave the Stephens Companies' borrow sites in the conditions promised, failed to purchase the quantity of fill material it agreed to buy and either intentionally or negligently deceived the Stephens Companies; and

**WHEREAS**, 5R Constructors asserted claims against the City claiming that if it was liable to the Stephens Companies, then the City was liable to it in the same amount and also asserted claims against the City for monies owed it for work it performed under the Contract and for interest on amounts it was due under the Contract; and

**WHEREAS**, by May 2005, 5R Constructors had substantially completed its work under the Contract and earned its \$7 million early completion bonus; and

**WHEREAS**, because of the Litigation and the claims asserted against the City by the Stephens Companies, the City withheld all further payments to 5R Constructors under the Contract in an approximate amount of \$14 million; and

**WHEREAS**, to avoid the expense, effort and risk of further litigation, 5R Constructors and the City now wish to resolve all claims, disputes, and differences that currently exist between them and in reaching such resolution provide that a total payment of \$450,000 by the City to 5R Constructors will be made.

**THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES**, that the City Attorney is authorized to execute an Agreement with 5R Constructors settling the Litigation, on behalf of the Department of Aviation, for a total not to exceed amount of Four Hundred Fifty Thousand Dollars and No Cents (\$450,000.00).

**BE IT FURTHER RESOLVED**, that the City Attorney be and is hereby directed to prepare and execute the Agreement.

**BE IT FURTHER RESOLVED**, that the Agreement will not become binding on the City and the City will incur no liability or obligation under it until it has been executed by the City Attorney, attested to by the Municipal Clerk and delivered to 5R Constructors.

**BE IT FINALLY BE RESOLVED**, that the \$450,000 to be paid by the City to 5R Constructors under the Agreement shall be charged to and paid for from existing funds in the Contract under Purchase Order 6072420000, Line 0015, Fund, Account, and Center Number: 2H21 (Airport Renewal & Extension Fund) 574001 (Facilities Other Than Buildings) R21E05069999 (Commuter Runway Project).